

Amendment dated 10/14/05
Reply to 07/14/05 Office Action
S.N. 10/660,316 Docket No. 0335

REMARKS/ARGUMENTS

Applicant respectfully requests that the above captioned application be reconsidered in view of the following remarks.

Claims 1, 2, 4, 5 and 7-11 are pending in the application. Claims 9-11 have been withdrawn following a restriction requirement under 35 U.S.C. §121 dated April 4, 2005, imposed by the Examiner and made final in the Office Action dated July 14, 2005.

Claims 4, 5, 7 and 8 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite as depending from a previously canceled claim. Claims 4, 5 and 7 have been amended herein in part to correct the dependency from claim 3 to dependency from claim 2. The dependency of claim 8 from claim 7 is now correct in view of the correction of the dependency of claim 7.

Claims 1, 2, 5, 7 and 8 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 3,006,532 to Fine and U.S. Patent 4,930,903 to Mahoney. The Examiner asserts that cover 16 of Fine or the lid 16 of Mahoney meets the structure of applicant's bag topper as claimed, and that the nomenclature for the bottom panel in applicant's structure does not structurally distinguish it from the panel 17 of Fine or the panels 60 or 90 in Mahoney.

Claim 4 has been rejected under 35 U.S.C. §103(a) over Fine or Mahoney. The Examiner states that Fine discloses the claimed invention except for the bag being made of paper and the cover of cardboard, and asserts that the use of paper for the bag and cardboard for the cover would have been obvious and within the general skill of the art. It is also asserted that Mahoney discloses the claimed invention except for a lid made from cardboard, and that selecting cardboard to make the lid in Mahoney also would have been obvious and within the general skill of a worker in the art.

In response thereto, claims 1, 2, 7 and 8 have been amended for clarity, to provide each claim element with antecedent basis, to better describe applicant's structure, and to better distinguish applicant's invention from the art of record by further refining the description of the structure of the bag topper for covering the opening of the bag in the assembled condition of the bag and topper. No new matter is introduced by these amendments to the claims, and it is requested that the amendments be entered. Consider now the teachings of each of the references.

The Fine patent describes a conventional shopping bag of generally rectangular shape having side and end walls with handle loops on opposite sides of the opening at the top of the bag, and wherein the side walls of the bag are creased so that the bag can be folded flat (col 1, lines 49-62).

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Fine further describes a cover for the shopping bag that is rectangular in shape in the form of an inverted box-like structure sized to cover the top opening of the bag when the bag is fully open (col 1, line 63, to col 2, line 4). The cover has two slots in its top panel for receiving the handle loops when the cover is placed over the top of the bag (col 2, lines 5-12).

The Mahoney patent describes a bag of conventional generally rectangular structure having front and back walls, a bottom wall and side walls defining an upper opening, the side walls being creased to allow the bag to be folded flat (col 2, lines 12-28). A pair of handles are attached in conventional fashion to the front and back walls on opposite sides of the opening (col 2, lines 29-33). Mahoney describes a generally rectangular shaped lid for the bag sized to cover the top of the bag when the bag is fully open (col 3, lines 3-11). The lid has a pair of slots for receiving the handles when the lid is assembled to the bag (col 3, lines 19-21). Mahoney discloses (col 3, lines 3-4) that the lid may be of stiffer sheet material than the material of the bag. The Mahoney structure includes one or more stiffening inserts (col 2, lines 46-63; Figs 1 and 3, #48 and #54) to provide structural support to the bag in the fully open condition.

The bag topper in applicant's claim 1 as amended is now clearly distinct from the structures described in the references in the way that the bag topper is structured. Specifically, and referring to Figs 2A, 2B and 3, the die cuts forming guide flaps 32 and handle openings 34 (see also applicant's specification at page 4, line 19, to page 5, line 10) are neither taught nor suggested nor inherent in the references, nor obviated by any teaching in the references. Applicant's bag topper is thereby structurally distinct from the structures described by the Fine and Mahoney patents. By reason of these structural distinctions, applicant's bag topper clearly is stronger than either of the structures described in the references. As also noted on page 5, lines 13-14 of applicant's specification, the guide flaps assist in guiding and holding the handles in place. The Examiner's assertion that applicant's bag topper is not structurally distinct from the cover 16 of Fine or the lid 16 of Mahoney is therefore not correct.

In view of the foregoing arguments, it is clear that applicant's bag topper structure is neither anticipated by nor obvious over either the Fine patent or the Mahoney patent or any combination thereof. Claim 1 is therefore patentable over both Fine and Mahoney. Claims 2, 4, 5, 7 and 8 depend directly or indirectly from claim 1, and are also allowable as presenting additional limitations to an allowable base claim.

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It is believed that the above represents a complete response to the Examiner's rejections and places the application in condition for allowance. Accordingly, reconsideration and allowance of Claims 1, 2, 4, 5, 7 and 8 are respectfully requested.

Applicant would appreciate the courtesy of a telephone call should the Examiner have any questions or comments with respect to this response.

Respectfully submitted,

By:



Donald E. Hasse
Attorney for Applicants
Registration No. 29,387
(513) 229-0383
Customer Number 26868

October 14, 2005